



Revenue and Transportation Interim Committee

62nd Montana Legislature

SENATE MEMBERS

RON ERICKSON
JEFF ESSMANN
KIM GILLAN
CHRISTINE KAUFMANN
JIM PETERSON
BRUCE TUTVEDT

HOUSE MEMBERS

DICK BARRETT
CYDNIE (CARLIE) BOLAND
ROY HOLLANDSWORTH
BRIAN HOVEN
SUE MALEK
MIKE MILLER

COMMITTEE STAFF

JEFF MARTIN, Lead Staff
JARET COLES, Staff Attorney
FONG HOM, Secretary

MINUTES

June 15-16, 2011 Meetings

June 16, 2011 Meeting

Room 137, Capitol Building
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. RON ERICKSON
SEN. JEFF ESSMANN
SEN. CHRISTINE KAUFMANN
SEN. BRUCE TUTVEDT

REP. DICK BARRETT
REP. CYDNIE (CARLIE) BOLAND
REP. ROY HOLLANDSWORTH
REP. BRIAN HOVEN
REP. SUE MALEK
REP. MIKE MILLER

COMMITTEE MEMBERS EXCUSED

SEN. KIM GILLAN
SEN. JIM PETERSON

STAFF PRESENT

JEFF MARTIN, Lead Staff
MEGAN MOORE, Legislative Research Analyst
JARET COLES, Staff Attorney
FONG HOM, Secretary

Visitors List and Agenda

Agenda, [Attachment 1](#)

Visitor's List, [Attachment 2](#)

COMMITTEE ACTION

- The committee adopted the meeting schedule with changes as discussed.
- The committee adopted the committee's work plan.

CALL TO ORDER AND ROLL CALL

00:00:01 Rep. Hollandsworth called the meeting to order at 8:02 a.m. The committee secretary took roll. Sen. Gillan and Sen. Peterson were excused.

AGENDA

00:01:15 Rep. Hollandsworth discussed proxy votes. He suggested that a member submit his or her proxy in writing to another member.

- **LEGISLATIVE FISCAL DIVISION REPORTS - Terry Johnson, Principal Fiscal Analyst**

- ▶ **General Fund Revenue Collection Update**

00:04:37 Mr. Johnson reported on the general fund revenue collections ([Exhibit 11](#)).

Questions

00:26:30 Rep. Miller asked if it was possible to determine if there was an increase in income tax revenue from the Bakken area. Mr. Johnson said that when the LFD gets income tax return data in the fall, it will analyze royalty and partnership income to determine if that income is causing an increase in current year payments.

Rep. Miller said that he was referring to the W2 withholding from Montana and North Dakota. Mr. Johnson said that the LFD does not have access to month-by-month withholding.

00:31:24 Sen. Erickson asked Mr. Johnson if the \$13 million from 2010 was high due to tax audit collections being down 26%. Mr. Johnson said there was an unusual audit that occurred in fiscal year 2010 that created that spike.

00:46:43 Rep. Barrett said that corporate profits are much more volatile than wage and salary payments, but the kind of volatility that we are seeing in wage and salary income is associated with identifying a turning point. Are we seeing the other turning point problem. Mr. Johnson said yes.

00:53:19 Rep. Malek asked if the ending fund balance in 2013 is more than \$188 million, will there be a tax credit if SB 426 passes. Mr. Johnson said a credit would be allowed if the excess general fund balance is at least \$5 million.

00:55:11 Rep. Barrett asked if the ending fund balance is projected off of the actual ending fund balance of this biennium. Mr. Johnson said that the \$150 is the projection at

this point, so anything that happens would be eligible for that excess calculation.

- 00:56:29 Sen. Kaufmann asked if Mr. Johnson could show what would have happened if over the last five years this law has been in place and how that would have impacted our budget. Mr. Johnson said that the LFD could do the calculation.
- 01:08:26 Sen. Essmann said the \$150 million number doesn't tie to HJR 2, but instead ties to legislative action and governor's vetoes. Mr. Johnson said in terms of the \$150 million projected balance, on the revenue portion, the Legislative Fiscal Division took HJR 2 as adopted by House Taxation, looked at the bills that were enacted, and if the bills increase revenue or decrease revenue for fiscal year 2011, then they either added to or subtracted from the HJR 2 number. On the spending side, they take HB 2, statutory appropriations, transfers, and any other bills and that determines the spending side. If the governor vetoes a piece of legislation and if it had an appropriation in it, they take that away. If the governor does a line item veto that affects the spending side, they take that away. Because of the governor's vetoes, there was a need for a public school supplemental appropriation of about \$53 million which LFD built into the projected balance for the 2013 biennium.
- 01:11:24 Sen. Essmann asked what the number would be if the Legislature did not pass the supplemental. Mr. Johnson said that if the Legislature did not adopt the supplemental in the 2013 session, the fund balance would increase by \$53 million.
- 01:11:41 Sen. Essmann asked if Mr. Johnson will do the same kind of analysis for every potential supplemental that the 2013 legislature might get. Mr. Johnson said no.
- 01:15:04 Rep. Barrett asked if we wanted to use any extra funds for retirement, for example, would we have to do that through a supplemental and spend it in the 2013 biennium. Mr. Johnson said yes.
- 01:16:39 Rep. Malek requested that Carroll South, Board of Investments, give a report to the committee regarding those funds.
- ▶ **Legislative Finance Committee 2013 Biennium Work Plan Item**
- 01:18:38 Mr. Johnson discussed the Legislative Finance Committee's work plan on the Revenue Estimating Process (**Exhibit 12**).
- Discussion**
- 01:26:32 The committee discussed the revenue estimating process and what is in the statutes. Rep. Barrett and Rep. Hoven said that technically speaking, there is nothing wrong with the revenue estimating process and that it contains projection errors that are relatively small. Rep. Barrett believes that having a council of economic advisors is a waste of time. Mr. Martin said that last interim, the committee discussed the rules, statutory provisions, and how other states estimate revenues. He said that most of that information can be found on the committee's website from last interim.

Mr. Johnson asked if the committee supports appointing some members of the committee to serve on a subcommittee to look at how the revenue estimate process works during the session and see if there are any recommendations. Rep. Hollandsworth said that the committee is not supportive of that idea but will work with the Legislative Finance Committee.

- **DEPARTMENT OF REVENUE REPORTS - Dan Bucks, Director**

- ▶ **Memorandum on Implementation of Selected 2011 Legislation**

01:44:02 Director Bucks reported on implementation of selected legislation from the 2011 Session ([Exhibit 13](#)).

- ▶ **Property Assessment Division Flood Disaster Update**

01:55:25 Director Bucks gave an update on the flood disaster as it pertains to property ([Exhibit 14](#)).

- ▶ **Court decisions related to centrally assessed property - Gene Walborn, Business and Income Tax Division**

02:05:00 Mr. Walborn gave a report on the PacifiCorp case ([Exhibit 15](#)).

02:18:56 Mr. Walborn gave a report on the Gold Creek Cellular case ([Exhibit 16](#)).

Questions

02:22:51 Rep. Barrett asked if the decision to centrally assessed necessarily implies a change in classification or not. Mr. Walborn said that the Legislature has defined specific classes of property that are associated with centrally assessed property. If you become a centrally assessed telecommunication company, you have to meet the centrally assessment test across state or county lines, operating as a class 13 unit. If you were a telephone company wholly within one county, those companies would be class 5 property at 3% tax rate. They don't do those as centrally assessed.

02:25:57 Sen. Tutvedt asked what the different tax rates are on property classes 4, 8, and 13. Mr. Walborn said that class 4 is 2.72% and class 8 is 3%, which will change with SB 372. He said that class 13 is 6%.

02:27:07 Sen. Tutvedt asked why the difference in the rates. Mr. Walborn said that the legislative rationale is their decision on why you tax class 13 at 6% and not 4%. As that was discussed yesterday, Sen. Gillan's bill, HB 128, moved telecommunication company's property from class 9 at 12% to class 13 at 6%.

Director Bucks discussed the two cases, the PPL case and the PacifiCorp case, which challenged the methods of valuation that the Department uses to arrive at market value.

- ▶ **Emerging Issues Decided by Montana Courts - Dan Bucks, Director**

02:43:26 Director Bucks discussed the case that was being heard in district court in Fallon County in which the Department of Revenue had denied the county the right to establish an industrial tax increment finance district. The judge prevailed on the

parties to submit their supplemental findings in within a week, so he could get a decision out within the month.

Questions

02:45:24 Rep. Barrett said that people are concerned about whether they are centrally assessed and how they are classified. He asked what the common state practice is for different classes of property in terms of different tax rates and if there is a potential constitutional equalization issue involved. He also asked about the differences in methodologies for valuing properties as a unit as opposed to components, and would that impact the total value of the property.

02:48:03 Director Bucks said that Minnesota and Montana are examples of extensive use of classification. There are other states that use fewer classes of property. Mr. Bucks said that Rep. Barrett's second question is a legal question. There are various constitutional tests. There is an equal protection test that is somewhat lower than some of the other tests, but the test on equal protection is whether there is a rational basis for the classifications.

Rep. Barrett said that if a business that was locally assessed and had added up all its local assessments, then became centrally assessed, would the total value under centrally assessment be equal to the sum of all the local assessments. Director Bucks said that in some incidents it may and in others it may not. It is a movement from piece and parcel valuation to unit valuation. The problem that you are trying solve is not to get at a dollar value but what most appropriately reflects the market value.

Public Comment

03:07:31 **Amy Grmoljez** commented on the litigation regarding Verizon Wireless (**Exhibit 16**). Verizon worked with Rep. Walter McNutt and Sen. Kim Gillan on legislation to clarify that telecommunications should not be centrally assessed.

03:13:21 **Nancy Schlepp, Montana Taxpayers Association**, disagreed with Director Bucks' opinion that legislative intervention will create risks. She said that the Association believes that it is the Legislature's prerogative to change anything it sees fit.

• COMMITTEE ACTION ON WORK PLAN, STUDY PLANS AND MEETING SCHEDULE

03:15:32 The committee discussed forming subcommittees to share fact finding information on the assigned studies. It was suggested that members of the committee be assigned homework so that when they meet, they would not always be starting at ground zero. Sen. Essmann said he would like future presentation in written form so that the committee members can become active participants instead of passive listeners.

• DISCUSSION ON MEETING SCHEDULE AND INCOME TAX

03:24:52 The committee members discussed proposed meeting dates. Sen. Essmann and Rep. Barrett had conflicts in September. Sen. Essmann asked if September 26

and 27 would work. Mr. Martin said that it would.

03:29:37 Sen. Erickson said that he wanted to discuss Sen. Joe Balyeat's Senate Bill 199 and his bill, SB 411, that dealt with various penalties for income taxes. He suggested that the Department of Revenue work on putting the two bills together to come up with a committee bill. Sen. Erickson requested that the issue be an agenda item at a future meeting and that the Department work on that.

- **ADMINISTRATION RULE REVIEW - Jaret Coles, Staff Attorney**

03:32:28 Mr. Coles discussed his memo dated June 3, 2011 ([Exhibit 17](#)) regarding department rules.

- **ADOPTION OF MEETING SCHEDULE AND WORK PLANS**

03:39:24 The committee discussed changing the meeting dates in September. Sen. Erickson requested that the meeting dates in December be held on the 8th and 9th.

03:42:17 Sen. Barrett **moved** to adopt the meeting schedule as proposed. The motion **passed** unanimously.

03:46:59 Rep. Barrett **moved** to adopt the work plan as presented. The motion **passed** unanimously.

Public Comment - none

- **ADJOURNMENT**

03:48:26 With no further business before the committee, Rep. Hollandsworth adjourned the meeting at 11:50 a.m.

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